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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 DATTA REBATI MOHAN,
12
13 vs. Petitioner,
14 ERIC HOLDER, Attorney General,
15 Respondent.
16

CASE NO. 11-CV-956 BEN (MDD)

**ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241**

17 Presently before the Court is Petitioner's Petition for Writ of Habeas Corpus under 28 U.S.C.
18 § 2241. For the reasons set forth below, the Petition is **DENIED**.

19 **BACKGROUND**

20 Petitioner Datta Rebat Mohan is a native and citizen of Bangladesh. (Return, Exh. A.) On
21 August 27, 2010, Border Patrol agents detained Petitioner near Calexico, California. (*Id.*) On
22 September 29, 2010, U.S. Citizenship and Immigration Services issued a Notice to Appear alleging
23 that Petitioner entered the United States at or near the Calexico Port of Entry without a valid entry
24 document and was removable pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). (*Id.*, Exh. B.) The Notice
25 to Appear was subsequently amended to allege that Petitioner entered the United States at a time and
26 place other than a designated port of entry, and charged him with removability under 8 U.S.C. §
27 1182(a)(6)(A)(i). (*Id.*, Exh. C.)

28 On January 24, 2011, Petitioner had a bond hearing at which the Immigration Judge ("IJ") set

1 bond at \$15,000. (*Id.*, Exh. D.) Petitioner appealed the bond order to the Board of Immigration
 2 Appeals (“BIA”), which affirmed the order on April 8, 2011. (*Id.*, Exh. E.) On February 4 and
 3 February 18, 2011, Immigration and Customs Enforcement (“ICE”) denied two requests by Petitioner
 4 to release him and lower his bond. (*Id.*, Exh. F.)

5 During this time, Petitioner had an individual hearing before an IJ on March 30, 2011 to
 6 adjudicate his applications for relief from removal. (*Id.*, Exh. G.) The IJ denied his applications for
 7 relief, and ordered him removed to Bangladesh. (*Id.*, Exh. H.) On April 12, 2011, Petitioner filed an
 8 administrative appeal of the IJ’s removal order, which is pending at the BIA. (*Id.*, Exh. I.)

9 Petitioner brought the present petition for habeas corpus on May 2, 2011. (Docket No. 1.) On
 10 June 17, 2011, Respondent filed a Return in opposition to the Petition. (Docket No. 8.) Petitioner did
 11 not properly file a traverse.¹

12 DISCUSSION

13 Petitioner alleges that he is being detained “indefinitely” in violation of the Due Process Clause
 14 of the Fifth Amendment and *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001). He alleges that this
 15 detention violates 8 U.S.C. § 1231, as he has been detained for over six months since his final removal
 16 order and there is not a significant likelihood that his removal will occur in the reasonably foreseeable
 17 future.

18 Petitioner is not being detained pursuant to 8 U.S.C. § 1231, as someone who is subject to a
 19 final order of removal and is awaiting repatriation. Petitioner is not subject to a final order of removal
 20 because his administrative appeal of the IJ’s order of removal is pending at the BIA. See 8 U.S.C.
 21 § 1101(a)(47)(B)(i) (an IJ’s order of removal becomes “final” upon “a determination by the Board of
 22 Immigration Appeals affirming such order”). Rather, Petitioner is being discretionarily detained
 23 pursuant to 8 U.S.C. § 1226(a), as someone who is awaiting a decision on his removal and has been
 24 granted a \$15,000 bond.

25 In addition, this action does not implicate the due process concerns addressed in *Zadvydas*.
 26 In that case, *Zadvydas* was stateless and both countries to which he could have been deported refused

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 28 ¹ Petitioner prematurely attempted to file a traverse on June 15, 2011, before Respondent had
 filed a return. (See Docket No. 7.) This document was rejected by the Court. Petitioner did not
 attempt to file another traverse after Respondent had filed the Return.

1 to accept him because he was not a citizen. *Zadvydas*, 533 U.S. at 684. The deportation of the other
 2 petitioner in that case, Ma, was prevented because there was no repatriation agreement between the
 3 United States and Cambodia. *Id.* at 686. The Supreme Court found that 8 U.S.C. § 1231(a)(6) "limits
 4 an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's
 5 removal from the United States" and "does not permit indefinite detention." *Id.* at 689. *Zadvydas* is
 6 inapplicable to the present action, as Petitioner is not subject to a final order of removal and is not
 7 indefinitely detained due to a lack of a repatriation agreement with Bangladesh.

8 In addition, Petitioner has been afforded due process. If ICE provides a petitioner with an IJ
 9 bond hearing, or otherwise provides a petitioner with the relief requested in a pending habeas petition,
 10 the petition may be dismissed because the petitioner has been awarded the process to which he is
 11 entitled. *See Flores-Torres v. Mukasey*, 548 F.3d 708, 710 & n.3 (9th Cir. 2008) (dismissing as moot
 12 a portion of a habeas petition which challenged detention without bond upon the granting of a bond
 13 hearing); *Singh v. Chertoff*, No. CV-07-0380-FVS, 2009 WL 211894, at *4 (E.D. Wash. Jan. 13, 2009)
 14 (finding that because the petitioner received a bond hearing by an IJ, his petition was moot even
 15 though he was not released). Here, Petitioner received a bond hearing before an IJ, and has been
 16 granted a \$15,000 bond. He is not entitled to further relief.

17 CONCLUSION

18 For the reasons set forth above, the Petition is **DENIED**. The Clerk is directed to close the file
 19 in this case.

20
 21 **IT IS SO ORDERED.**

22
 23 DATED: November , 2011


 24 HON. ROGER T. BENITEZ
 United States District Court Judge